

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *
*
* * * * *

Transcript of proceedings before The
Honorable Richard J. Ganucheau, Judge Pro Tempore,
Civil District Court, Parish of Orleans, State of
Louisiana, 421 Loyola Avenue, New Orleans, Louisiana
70112, commencing on June 18, 2001.

* * * * *
Wednesday
April 30, 2003
1:39 p.m.
* * * * *

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WITNESS:	PAGE
PETER P. ROWELL, Ph.D.	
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P R O C E E D I N G S

THE CLERK:
All rise for the jury, please.
(Jury seated.)
THE LAW CLERK:
All rise. Recess is over. Court will
come to order.
THE COURT:
Please be seated.
End of direct?
MR. SCHNEIDER:
Yes, Your Honor.
THE COURT:
Cross-examination, Mr. Bruno?
MR. BRUNO:
Yes, Your Honor. Good afternoon, ladies

17 and gentlemen. And, Doctor, how we doing?
18 THE WITNESS:
19 Good afternoon. Fine.
20 CROSS-EXAMINATION BY MR. BRUNO:
21 Q. Dr. Rowell, you've testified in the past,
22 have you not, that some of your views are outside of
23 the mainstream.
24 A. Yes.
25 Q. Okay. Briefly, what does that mean, your
26 views are outside of the mainstream?
27 A. Well, I do not think it has been helpful to
28 dilute down the definition of the word addiction to
29 apply to all substances of dependence, whether
30 they're mild or strong. I don't think that's been
31 helpful. I think it's simplistic, and that
32 terminology for addiction has currently been applied
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1 to any substance with any degree of dependence, and
2 that's the one area that I think has not been
3 scientifically a good concept, but it's a
4 colloquialism that's used in everyday use, but it's
5 not a point that's a major concern.
6 Q. Can we try it one more time? What does it
7 mean to have a view that's outside of the
8 mainstream?
9 A. That means that that view that I hold about
10 that -- use of that word -- is not the way it's
11 commonly used in the press or in the mainstream
12 media or in the newspapers, television, et cetera.
13 Q. It goes well beyond that, now, doesn't it,
14 Doctor? It goes well beyond the press and the
15 media. It goes beyond the public health agencies.
16 It goes to physicians all over the country, doesn't
17 it?
18 A. Most of the time scientists use the word
19 dependence, but they begin to use the word addiction
20 when they talk to the general population because
21 it's a term that a lot of people know a little bit
22 better than dependence. Most of the time, for
23 scientists, it's dependence.
24 Q. So, before we talk about how your opinions
25 differ from the mainstream, let's talk about how
26 your opinions are consistent with mainstream
27 scientific theory and thought. Okay?
28 A. Sure.
29 Q. All right. You showed the jury this morning
30 a series of demonstratives, do you recall that?
31 A. Yes.
32 Q. The first one talked about the
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1 neurotransmitters in the brain, right?
2 A. Right.
3 Q. Is that consistent with mainstream scientific
4 thought?
5 A. Yes.
6 Q. Is that consistent with the opinions of Dr.
7 Henningfield and Dr. Benowitz?
8 A. I don't know what his opinions are, but I
9 would suspect they would be, yes.

10 Q. This is common scientific knowledge, right?
11 A. Yes.
12 Q. You would expect, therefore, that it would be
13 consistent with Dr. Henningfield's and Dr.
14 Benowitz's opinions, right?
15 A. Yes.
16 Q. Then you showed the jury a series of pictures
17 that described how nicotine passes from one nerve
18 ending to the other, right?
19 A. Yes.
20 Q. And let's see. There's a series of these.
21 There's one, two, three, four, five, six -- there's
22 eight of these.
23 This is describing the basic science of how
24 nicotine and the other drugs pass through the nerve
25 endings, right?
26 A. Correct.
27 Q. There's nothing controversial about this at
28 all?
29 A. No.
30 Q. And your opinion on this subject is not at
31 all different from your opinions of Dr. Henningfield
32 and Dr. Benowitz; is that true?

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1 A. I assume they understand that, yes.
2 Q. Well, do you have any reason to believe that
3 they don't understand that?
4 A. No, not really. There's been a few things in
5 testimony which were probably slight misstatements,
6 for example, that cocaine blocks dopamine, when, for
7 example, it blocks its reuptake. I'm sure those two
8 individuals understand how the nerve terminal works.
9 Q. In fact, you've testified that you respect
10 Dr. Henningfield as an able and knowledgeable
11 scientist in his field, have you not?
12 A. Yes.
13 Q. Now, this one relates to the comparison of
14 dopamine levels in the synapses. Remember this one?
15 A. Yes.
16 Q. And this one, this is also mainstream
17 science, right?
18 A. That's right.
19 Q. Nothing controversial about this at all?
20 A. No.
21 Q. I believe at the bottom, you indicate some
22 sources for this, and the source for this one is an
23 article in Nature magazine?
24 A. Correct.
25 Q. Okay. And do you agree with the conclusions
26 that are reached by the authors of this magazine
27 that you used to cite for your demonstrative aid?
28 A. Could you refresh me on what those
29 conclusions are? There are so many papers, but --
30 Q. That's fine. So we're clear, you told the
31 jury this morning that you constructed this chart
32 based upon the source information that you have

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1 identified on the bottom, right?
2 A. Correct.

3 Q. Okay.
4 MR. BRUNO:
5 Can we call up, please, GK-100254 on the
6 screens.
7 May we publish, Your Honor?
8 THE COURT:
9 You may publish.
10 EXAMINATION BY MR. BRUNO:
11 Q. All right. Do you see on the screen there,
12 Doctor, look familiar to you?
13 A. Yes.
14 Q. Can we go to Page 2?
15 MR. BRUNO:
16 And may we publish it, Your Honor?
17 THE COURT:
18 You may publish it.
19 MR. BRUNO:
20 Can we blow up in the abstract the last
21 sentence in the left-hand column which
22 starts: "These neurochemical and metabolic
23 effects"?
24 EXAMINATION BY MR. BRUNO:
25 Q. Do you see that?
26 A. Yes.
27 Q. Do you recognize that sentence as one of the
28 conclusions that the authors reach?
29 A. Yes.
30 Q. It says there, read with me if you don't
31 mind:
32 "These neurochemical and metabolic
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1 effects are qualitatively similar to those of
2 other drugs, such as cocaine, amphetamine and
3 morphine, which have strong addictive
4 properties."
5 That's what they say?
6 A. Right.
7 Q. They're comparing them to nicotine?
8 A. Right.
9 Q. Do you disagree with that?
10 A. No. I agree they are qualitatively similar,
11 not quantitatively similar. The analogy I make on
12 that, when people tell me they are qualitatively
13 similar. Opening the bathroom faucet is
14 qualitatively similar to Niagara Falls. I agree
15 they are qualitatively similar in the fact that all
16 these compounds release dopamine into the synapse.
17 That's a correct statement.
18 Q. Correct statement. I want to make sure where
19 we are agreeing.
20 MR. BRUNO:
21 Can we highlight the next sentence,
22 please, which starts with our results?
23 EXAMINATION BY MR. BRUNO:
24 Q. All right. It says there:
25 "Our results provide functional and
26 neurochemical evidence that there are
27 specific neurobiological commonalities
28 between nicotine and addictive drugs."
29 You agree with that?
30 A. I do.

31 Q. Okay. Let's go to the next chart. Then you
32 had a chart that compared quenching thirst, eating,
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1 sex, nicotine and caffeine. Remember that?
2 A. Yes.
3 Q. I got to ask you this question: The dopamine
4 that's released in male rats after they have sex,
5 does it stay the same after 20 years of marriage?
6 A. After the rats have been married 20 years?
7 Q. Yeah, or does it go down?
8 A. It probably goes down.
9 Q. In any case, this is new science?
10 A. No.
11 Q. Is there something controversial about this?
12 A. No.
13 Q. Do you mean to suggest by this chart that
14 quenching one's thirst is a dependence-type
15 behavior?
16 A. No. That simply means that in order to get
17 dopamine in the synapse, it doesn't require a drug
18 effect, that normal behaviors that are pleasurable
19 do that as a matter of course.
20 Q. You're comparing normal behaviors to nicotine
21 and caffeine, which do require some drug effect to
22 increase these dopamine levels, right?
23 A. Right.
24 Q. Okay. Again, nothing controversial here?
25 A. Correct.
26 Q. All right. Next chart, this one is a how
27 good do you -- do these drugs make you feel?
28 A. Right.
29 Q. Anything controversial here?
30 A. No. Published study.
31 Q. And the study is, in fact, one by Dr.
32 Henningfield?

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1 A. Right.
2 Q. You agree with all the conclusions that Dr.
3 Henningfield reaches in this article?
4 A. Again, I would have to see what the
5 conclusions are.
6 Q. Fair.
7 A. Probably not.
8 Q. Okay. Well, before we get into them, why on
9 earth would you use this article as the basis for
10 the chart if you don't agree with its conclusions?
11 A. The summary searchers, by indicating that
12 nicotine and caffeine, by the way, as well, release
13 dopamine, that this makes them drugs with what they
14 call addiction. Whereas, in fact, it makes those
15 drugs have dependence potential, but I think it's
16 weak, and I don't -- I have disagreed with Dr.
17 Henningfield on some occasions, but maybe in this
18 one instance, if you show me what the conclusions
19 are.
20 Q. We will?
21 A. Sure.
22 MR. BRUNO:
23 Can we please call up GK-487, Carl, on

24 the monitor.
25 Your Honor, may we publish the front
26 page?
27 THE COURT:
28 No objection, I presume. You may
29 publish.
30 MR. SCHNEIDER:
31 No objection.
32 MR. BRUNO:
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1 Can we highlight the title so we know
2 what we're talking about here?
3 EXAMINATION BY MR. BRUNO:
4 Q. It's entitled the "Pharmacologic Basis and
5 Treatment of Cigarette Smoking." "Pharmacologic
6 basis" means that there's some drug interaction with
7 the brain, right?
8 A. Correct.
9 Q. Let's just -- why don't we go ahead and
10 highlight the abstract? Is that the fairest way to
11 do this?
12 A. That's fair.
13 Q. The abstract is the bold part, the whole
14 thing. All right. Now, first let's take it a
15 sentence at a time. Is that reasonable?
16 A. Fine.
17 Q. First sentence is:
18 "Data are reviewed which support the
19 contention of the American Psychiatric
20 Association and the U.S. Public Health
21 Service that cigarette smokers may become
22 addicted to nicotine."
23 Do you agree with that statement?
24 A. I guess insofar as it goes. I would have
25 preferred if it said may become mildly dependent to
26 nicotine. If they're using the word nicotine, as is
27 commonly done, for any degree of dependence, that's
28 a true statement.
29 Q. You're telling the jury that the word
30 addiction is used for any degree of dependence?
31 A. Yes.
32 Q. You've testified in the past quite
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1 differently, haven't you?
2 A. I've testified in the past there was severe
3 mild and weak dependence and actually, pharmacology
4 textbook for 30 years said that addiction should be
5 reserved for moderate and severe dependence and not
6 mild dependence. Now, particularly since the 1988
7 Surgeon General's Report specifically says we are
8 equating addiction and dependence as synonymous
9 terms. Any degree of addiction means --
10 Q. That's fine. That wasn't my question. I'm
11 trying to figure out if you have changed your
12 testimony. You have testified, have you not, and I
13 think you just told the jury, that mild dependence-
14 producing drugs aren't to be considered as
15 addictive?
16 A. No. I prefer in the scientific setting to

17 not use the word addiction at all.
18 Q. Okay.
19 A. I prefer to use dependence, and we can
20 classify things as mild, moderate or severe
21 dependence.
22 Q. Are you changing your opinion today? I'm
23 sorry. I'm not following you. Are you saying to
24 the jury today that you are now embracing the
25 concept of addiction, or not?
26 A. I do not like the new definition of
27 addiction, but I'm not quibbling about it as long as
28 people are clear that when they say addiction in
29 these contexts, they are not meaning that these are
30 drugs with severe dependence potential. They just
31 have dependence potential, and that's what Dr.
32 Henningfield is saying here. So, I will not quibble
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1 with that statement the way he's using the word
2 addiction.
3 Q. All right. So, you agree with Dr.
4 Henningfield's statement as reflected in the first
5 paragraph?
6 A. Yes.
7 Q. Okay. I'm sorry. The first sentence. All
8 right. The next sentence is:
9 "Available data indicate that, one,
10 tobacco use shares many factors in common
11 with previously studied forms of drug
12 abuse -- most notably, narcotic addiction."
13 Now, before -- you just told the jury
14 that Dr. Henningfield in this article is using the
15 word addiction to describe mild dependencies, right.
16 A. Or moderate or severe, necessity degree.
17 Q. I'm confused again. Did you not just tell
18 the jury that Henningfield is using addiction to
19 describe mild dependency in this article?
20 A. Yes.
21 Q. That doesn't seem like what he's saying in
22 this sentence now. He's comparing tobacco use to
23 narcotic addiction. Is narcotic addiction a mild
24 dependency?
25 A. No.
26 Q. Well, help me out here, Doctor. What is he
27 saying? Is he saying that tobacco use is similar to
28 narcotic addiction, or not?
29 A. Dr. Henningfield has specifically said that
30 caffeine is addicting, that nicotine is addicting,
31 that heroin is addicting. In other words, any drug
32 that has a dependence potential, even if it's mild,
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1 he uses the word addiction. That's the word that I
2 said I was uncomfortable with, and I would rather
3 just stick with dependence, which most scientists
4 do. He's using the word addiction for all degrees,
5 like it's black or white, it's addicting or not
6 addicting. So, he's using it for mild dependence
7 and, in this case, most scientists, and I'm sure Dr.
8 Henningfield will agree, that narcotics produce
9 severe dependence.

10 Q. We made a deal yesterday. Do you remember
11 the deal we made?
12 A. No.
13 Q. The deal we made was that you would say "Yes"
14 or "No" at the end of my question and then if you
15 wanted to explain, you would have all the
16 opportunity in the world to explain. Is that fair?
17 A. That's fair.
18 MR. WITTMANN:
19 Objection, Your Honor.
20 EXAMINATION BY MR. BRUNO:
21 Q. Can we continue the deal today?
22 MR. WITTMANN:
23 May we approach?
24 THE COURT:
25 You may approach
26 (Whereupon, a sidebar conference is held
27 as follows:)
28 MR. WITTMANN:
29 The answer that the witness gave was a
30 completely responsive answer to the question
31 made. Mr. Bruno is arguing with the witness
32 and going back and getting into the preambles
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1 that he's prone to get into. I object.
2 THE COURT:
3 Do you think it's unreasonable, since
4 they agreed yesterday, that he would answer
5 with a "Yes" or "No" if he could and then
6 explain, to try to hold it to that today? It
7 may be that Bruno said more words than was
8 appropriate, but I think he's entitled to
9 have a "Yes" or a "No" and then an
10 explanation. To remind the witness to do
11 that, I think, is appropriate, even if the
12 answer may have been responsive without the
13 "Yes" or a "No."
14 (End of sidebar.)
15 THE COURT:
16 If that's an objection, it's overruled.
17 Next question, please.

18 EXAMINATION BY MR. BRUNO:
19 Q. Doctor, so, the question is once again that
20 Dr. Henningfield here is comparing tobacco use with
21 narcotic addiction, right?
22 A. Yes.
23 Q. And you agree with the statement?
24 A. Yes, the way he's using the word addiction.
25 Q. And the way he's using the word addiction is
26 to include moderate and severe dependency, correct?
27 A. Any degree of dependence, right.
28 Q. All right. If it includes any degree of
29 dependency, that would include narcotic -- I'm
30 sorry -- the nicotine effect on the brain, right?
31 A. Exactly.
32 Q. And you agree with him?
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1 A. Yes.
2 Q. Okay. Next sentence says -- next, I guess,

3 part of the sentence is:
4 "The rate and pattern of cigarette
5 smoking are partially determined by nicotine
6 dose level."
7 Do you agree with that?
8 A. I agree with that.
9 Q. Okay.
10 "Nicotine meets established criteria for
11 a prototypic drug of abuse."
12 Do you agree with that?
13 A. No.
14 Q. All right.
15 "These findings have implications for
16 the understanding and treatment not only of
17 cigarette smoking but of other forms of drug
18 abuse and psychiatric disorders in which
19 tobacco use is a cofactor."
20 Do you agree with that?
21 A. I agree with that.
22 Q. Okay. So, so far, the only thing that we
23 disagree with is that nicotine meets the established
24 criteria for a prototypic drug of abuse, right?
25 A. That's correct.
26 Q. Okay. Then, you held up this chart about the
27 reinforcement?
28 A. Right.
29 Q. Anything controversial here?
30 A. No.
31 Q. Dr. Henningfield and Benowitz agree with
32 this?

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1 A. I assume so. It was a published study with
2 that information.
3 Q. All right. Here, we have this last chart.
4 It's the Dependence Potential of Drugs?
5 A. Correct.
6 Q. So, anything controversial here?
7 A. It's right out of a medical textbook.
8 Q. Dr. Henningfield and Benowitz both agree?
9 A. I assume so.
10 Q. Okay. All right. Now, so, most of the
11 testimony you gave this morning was not
12 controversial, right?
13 A. Correct.
14 Q. Let's get to the controversy. Let's see if
15 we can understand what it is we're fighting about.
16 We want to give it to this jury as succinctly as we
17 possibly can. What -- what is the beef?
18 A. The beef is the categorization of cigarette
19 smoking as a drug addiction or a drug administration
20 protocol. In other words, cigarette smoking is just
21 a drug delivery procedure. Analogous, perhaps, to a
22 heroin addict using a syringe to inject themselves
23 with heroin. I do not agree with that. I think the
24 studies clearly say nicotine is a weak drug, nobody
25 uses it by itself, it is coupled with behavior, and
26 my beef is that the behavioral component of nicotine
27 in the cigarettes, which contribute, but the
28 nicotine components of cigarette behavior are
29 extremely important in that activity.
30 Q. You added some words that I was not -- seen

31 before in your depositions. You said the beef is
32 that it is not just a drug administration device.
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1 A. Right.
2 Q. Is it your testimony that the Surgeon
3 General's view is that nicotine -- that the
4 cigarette is just a nicotine delivery device?
5 That's his only conclusion?
6 A. It's his conclusion to make --
7 Q. Just answer the question "Yes" or "No" and
8 then you can explain away.
9 A. Okay.
10 Q. Is that his only conclusion, that it is just
11 a nicotine delivery device?
12 A. No, it's not his only conclusion.
13 Q. All right. In fact, in the mainstream, no
14 one in this country says that the cigarette is just
15 a nicotine administration device, do they? "Yes" or
16 "No"?
17 A. Well, I'm not exactly sure. I would say
18 there are people that say that cigarette smoking is
19 just a nicotine delivery device, and if it weren't
20 for the nicotine in cigarettes, nobody would smoke
21 cigarettes.
22 Q. Who are they? Are they in the mainstream?
23 A. That's a commonly used concept. I think
24 everyone understands that there are behavioral
25 aspects to cigarette smoking.
26 Q. Precisely.
27 A. But they don't give that the weight of a
28 behavioral dependency. They say cigarette smoking
29 is a drug dependency.
30 Q. Again, I'm just struggling here to try to
31 figure out what it is that you're telling this jury
32 that is controversial. Okay? That's what I'm
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1 trying to determine.
2 Now, you agree with me that the Surgeon
3 General and mainstream scientists do not say that
4 the cigarette is just a nicotine delivery device,
5 right? "Yes" or "No"?
6 A. I -- no.
7 Q. Thank you. In fact, the cigarette
8 executives, they don't say it's just a nicotine
9 delivery device, do they?
10 A. They don't say that, correct.
11 Q. In fact, the cigarette does deliver nicotine,
12 doesn't it?
13 A. Yes.
14 Q. It is a nicotine delivery device, isn't it?
15 A. In the same sense that a coffee -- cup of
16 coffee is a caffeine delivery device.
17 Q. "Yes" or "No"?
18 A. In that sense, it is, yes.
19 Q. Okay. Now, does Dr. Benowitz say that the
20 cigarette is just a nicotine delivery device?
21 A. I don't know what he says.
22 Q. You don't know. Does Dr. Henningfield say
23 it's just a nicotine delivery device?

24 A. I don't know.
25 Q. You don't know. So, you don't really even
26 know if there's a controversy, do you?
27 A. I know there's a controversy.
28 Q. Well, so far, you've demonstrated to this
29 jury that your interpretation, that is, just, is not
30 shared but by a few people in the entire country.
31 So, where's the controversy?
32 MR. WITTMANN:
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1 Objection, Your Honor. May we approach?
2 THE COURT:
3 Sure.
4 (Whereupon, a sidebar conference is held
5 as follows:)
6 THE COURT:
7 Mr. Bruno, read your question. Up here.
8 I've got it frozen.
9 MR. BRUNO:
10 Okay. I'll reask the question, Your
11 Honor. Withdrawn.
12 MR. WITTMANN:
13 He's withdrawing the question?
14 THE COURT:
15 Question is withdrawn?
16 MR. BRUNO:
17 Yes.
18 (End of sidebar.)
19 THE COURT:
20 Next question, please.
21 Next question.
22 EXAMINATION BY MR. BRUNO:
23 Q. Doctor, I'm having a hard time here
24 understanding where the controversy is.
25 MR. WITTMANN:
26 May I object again, Your Honor.
27 THE COURT:
28 Sustained.
29 EXAMINATION BY MR. BRUNO:
30 Q. If the Surgeon General doesn't say that it's
31 just a nicotine delivery device and you don't know
32 what Dr. Henningfield says and you don't know what
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1 Dr. Benowitz says -- do you even know what we say,
2 the lawyers at these tables.
3 A. Well --
4 Q. Us. The plaintiffs.
5 A. I don't know. Tell me what you --
6 Q. I didn't ask that.
7 A. Say something.
8 Q. Do you know --
9 MR. SCHNEIDER:
10 Object to the form, Your Honor.
11 THE COURT:
12 Overruled. Answer the question.
13 A. I don't know what your opinion is about the
14 extent of nicotine's effect on the cigarette smoker.
15 EXAMINATION BY MR. BRUNO:
16 Q. Tell the jury, please, identify, please, a

17 person who holds the view that the cigarette is just
18 a nicotine delivery device.
19 A. It's probably fair to say that that would be
20 better phrased as primarily a nicotine delivery
21 device, and that, I disagree with, but people do
22 think that cigarette smoking is primarily a drug
23 delivery device, rather than just --
24 Q. Fine. We'll keep going. We'll chip away at
25 this. Who says in this country that the cigarette
26 is primarily a nicotine delivery device?
27 A. Many people. In fact, Dr. Henningfield has
28 said that.
29 Q. I thought you just told the jury you don't
30 know what their opinions are in this case?
31 A. I didn't say I don't know what any of their
32 opinions were. I said on that particular subject.

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1 Well, here's another opinion, if you want some
2 beefs. Dr. Henningfield has written that nicotine
3 is a powerful drug of addiction, quote, end quote.
4 I disagree with that. I think nicotine has not been
5 shown to be used or abused in any form by anybody,
6 and that's another part of the controversy.

7 The main controversy, since you asked, is the
8 extent that behavior is important in the craving for
9 a smoke when somebody has given up smoking for six
10 months, it's a lifestyle that they incorporate into
11 their everyday life as opposed to the fact that
12 these people want a hit of nicotine in their body,
13 which they could, of course, get by nicotine.
14 That's the controversy. That's it.

15 Q. All I want to do is identify it.

16 A. That's it.

17 Q. Let me see if I understood. If in this hand
18 I have the component of the cigarette smoke which
19 contains a drug which interacts with the brain.
20 That's the pharmacologic component.

21 A. That's the nicotine.

22 Q. All right. And in this hand, I have just
23 simply the movement of the hand to the face, is that
24 the behavior?

25 A. No. It's much more complex than that.

26 Q. What is it?

27 A. It's associated with a lot of queues, for
28 example, when you get up in the morning, have your
29 cup of coffee, watch television, it's a lot of
30 manipulative and it's very repetitive. That's one
31 thing. Interesting, because nicotine is rather
32 weak, you can do it 100 times a day. It's

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1 repetitive, ritualistic. That's part of it.

2 Q. All I want to understand, so that I'm clear,
3 the behavioral component, there are no drugs in the
4 behavioral component, right, none?

5 A. Well, if you just separate out the behavior,
6 that would be true, right. A cigarette has both.

7 Q. Didn't you just tell the jury that the whole
8 controversy is the degree to which there's a drug
9 component versus the degree to which there's a

10 behavior component?
11 A. Yes.
12 Q. Okay. So, we got to separate out the drugs,
13 don't we?
14 A. Yes.
15 Q. Let's do it one more time. The big
16 controversy is if I have in my right hand the
17 effects of nicotine on the brain, the pharmacologic
18 effects, and in my left hand, I have the behavioral,
19 no drug effect, the degree to which each of these
20 contributes to this compulsive use; is that it?
21 A. Well said.
22 Q. Thank you.
23 Now, to be more specific about the
24 controversy, the mainstream view is that the
25 pharmacologic component, when combined with the
26 behavioral component, is the more powerful of the
27 two; is that fair?
28 A. That is not the mainstream view for nicotine
29 pharmacology people. But --
30 Q. Let's make it easy. The Surgeon General.
31 Surgeon General. Okay? Surgeon General's view
32 is -- the Surgeon General's view, when you combine
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1 these two, the pharmacologic component is the more
2 significant component?
3 A. I'm not sure he says that exactly. In fact,
4 you just indicated he didn't say the just, but I
5 don't know where he falls.
6 Q. I never said just. Did I say just?
7 MR. WITTMANN:
8 May I ask that he be allowed to complete
9 his answer.
10 A. My perception is the Surgeon General would
11 say the pharmacologic effects of nicotine are the
12 primary reinforcer for smoking cigarettes.
13 EXAMINATION BY MR. BRUNO:
14 Q. Benowitz, he's with the Surgeon General,
15 right?
16 A. Benowitz is with the Surgeon General.
17 Q. Henningfield, he's with the Surgeon General?
18 A. He's way over more.
19 Q. He's more?
20 A. Right.
21 Q. Where is Brown and Williamson?
22 A. I don't know. I'm not a spokesman for Brown
23 and Williamson.
24 Q. Well --
25 A. I don't know what they --
26 Q. You remember yesterday we showed the jury the
27 website, remember that?
28 A. Right.
29 Q. And we also showed the jury the admission
30 that it was addicting.
31 A. The behavior.
32 Q. The word you don't like.

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1 A. Their website that I think you showed me
2 yesterday, they said that cigarette smoking is an

3 addictive behavior.

4 Q. Do we have to bring it up again?

5 MR. WITTMANN:

6 Your Honor, I object.

7 May the witness be allowed to finish his
8 answer before he's interrupted with another
9 question?

10 THE COURT:

11 Doctor, have you finished your answer?

12 THE WITNESS:

13 All right. I'll finish my answer. I've
14 finished.

15 EXAMINATION BY MR. BRUNO:

16 Q. You talked to the lawyers last night about
17 this?

18 A. No.

19 O. You didn't?

20 A. Not about this.

21 0. Did you look at the website?

22 A. No. I'm doing this from memory.

23 Q. Do I have to read you the website again? The
24 website says that Brown and Williamson believes that
25 smokers should rely on the advice of appropriate
26 health authorities, such as the Surgeon General, for
27 information on smoking and health, including the
28 conclusions that smoking causes disease and is
29 addictive. That's what they say?

30 A. I agree with that.

31 Q. So, Brown and Williamson falls on the side,
32 the mainstream view that the Surgeon General holds,
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1 correct?

2 A. Not the way you're putting it, because the
3 Surgeon General -- just a minute -- the Surgeon
4 General we were talking about is how much of
5 cigarette smoking addiction, if you want to use that
6 word, is drug-driven or behavior-driven, and that
7 statement simply says that cigarette smoking is
8 addictive. It doesn't say whether it's mainly a
9 behavioral addiction or a drug addiction in that
10 statement.

11 Q. Maybe I was not in the courtroom when I read
12 my own statement here. I'll do it again. It says
13 that smokers should rely on the Surgeon General,
14 right?

15 A. Sure.

16 Q. And we just established what the Surgeon
17 General has to say?

18 A. Right.

19 Q. So, Brown and Williamson is adopting the
20 views of the Surgeon General as it relates to
21 smoking and addiction, correct?

22 MR. WITTMANN:

23 Objection, Your Honor. Asked and
24 answered.

25 THE COURT:

26 Overruled.

27 Answer the question if you're able to.

28 A. That website says they should rely on the
29 Surgeon General for disease and the fact that
30 smoking is addictive. I have no problem with that.

31 EXAMINATION BY MR. BRUNO:
32 Q. All I'm asking you is this: Brown and
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1 Williamson is in the mainstream with the Surgeon
2 General; isn't that true?
3 A. Yeah.
4 Q. Thank you.
5 RJR is in the mainstream with the Surgeon
6 General, right?
7 A. Yes.
8 Q. Philip Morris is in the mainstream with the
9 Surgeon General?
10 A. I assume so, yes.
11 Q. And Lorillard is in the mainstream with the
12 Surgeon General?
13 A. Right.
14 Q. Okay. Now, so, pretty much the cheese stands
15 alone here, right?
16 A. No.
17 Q. You're the only guy -- you're not?
18 A. No, not at all.
19 Q. Okay. Have you published this view?
20 A. No.
21 Q. You haven't.
22 A. It's not a peer-reviewed original science --
23 I do laboratory research. It's not an editorial --
24 I have, by the way, written this to the newspapers,
25 but I haven't published it in a peer-reviewed
26 journal.
27 Q. All right. Well, we can agree, though, that
28 you are in the minority of individuals who hold this
29 view?
30 A. Only the way the nicotine addiction term is
31 used. I don't think it's helpful or -- and I think
32 it's simplistic. That's all. If -- if I buy into
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1 the Surgeon General's term, which he says in the
2 report, that addiction and any degree of dependence
3 is synonymous, then I agree with the Surgeon General
4 that nicotine is addicting and that cigarette
5 smoking is an addictive behavior.
6 Q. Well, we can all go home, then. Tell the
7 jury. "I agree with the Surgeon General that
8 cigarette smoking is addictive."
9 A. And that nicotine is addicting and that
10 caffeine is addicting, but there are different
11 degrees of addiction, and people -- it is not so
12 addicting that anyone can get addicted to pure
13 nicotine.
14 Q. But --
15 A. That's it.
16 Q. Please, though, be fair with the jury.
17 You're now telling the jury if the Surgeon General
18 says that cigarette smoking is addictive as
19 caffeine?
20 MR. WITTMANN:
21 Objection, Your Honor. May we approach.
22 A. The Surgeon General has --
23 MR. WITTMANN:

24 Objection.
25 THE COURT:
26 Don't answer.
27 You may approach.
28 (Whereupon, a sidebar conference is held
29 as follows:)
30 MR. WITTMANN:
31 Again, Your Honor, Mr. Bruno continues
32 to preface his remarks, "be fair with the
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1 jury," implying that the witness has been
2 unfair. I think that's improper and
3 prejudicial and inappropriate.
4 THE COURT:
5 I think it's inappropriate.
6 MR. BRUNO:
7 He's changing his answers by the minute.
8 He's not answering my questions.
9 THE COURT:
10 That may be true, but the comment, the
11 implication that he's not being fair with the
12 jury, is inappropriate. You do not get to
13 testify. This is not closing argument. It
14 is an improper form of questioning. You can
15 ask for the same information without that
16 statement, and that's the grounds for the
17 objection.
18 MR. BRUNO:
19 May I make this request? That the same
20 rule that you imposed on the plaintiffs be
21 imposed on these defendants. That is the
22 witness may not answer the question way out
23 beyond what I ask? I asked a question about
24 what the Surgeon General had to say --
25 THE COURT:
26 You can make an objection that it's
27 nonresponsive and ask me to strike, which is
28 what they've done, and I'll do that if I
29 agree with you.
30 (End of sidebar.)
31 MR. BRUNO:
32 Your Honor, in view of the witness'

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1 answer, I move to strike that part of the
2 witness' answer that was not responsive.
3 THE COURT:
4 The objection of Mr. Wittmann is
5 sustained.
6 The jury will disregard the question.
7 MR. BRUNO:
8 Can we have the question read back?
9 THE COURT:
10 I have struck the question and --
11 MR. BRUNO:
12 We will start all over again.
13 THE COURT:
14 I've instructed you to ask the witness a
15 question, please.
16 MR. BRUNO:

17 All right.
18 EXAMINATION BY MR. BRUNO:
19 Q. The Surgeon General -- you agree with the
20 Surgeon General with regard to what he has to say
21 about cigarette smoking and addiction; isn't that
22 true? "Yes" or "No."
23 A. Yes, except that I don't like the way he used
24 the term addiction. He defines it, and with that
25 definition, I agree with him. Yes.
26 Q. All right. What is his definition?
27 A. His definition is that addiction is a
28 compulsive drug use, it's psychoactive effects, and
29 it's drug-reinforced behavior.
30 Q. Okay.
31 A. And that's -- if it satisfies those three,
32 then it's addicting and/or weak, moderate, severe

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1 dependence, doesn't matter, it's addictive.
2 Q. So, it's compulsive drug use, so, we're back
3 to square one, right?
4 A. Yes.
5 Q. So, I guess I'm confused again, which is
6 where -- where is the controversy now?
7 MR. WITTMANN:
8 Further objection of Mr. Bruno's
9 confusion.
10 MR. LONG:
11 May I approach, Your Honor?
12 THE COURT:
13 Disregard Mr. Bruno's comment that he is
14 confused again.
15 Mr. Bruno, ask the witness a question if
16 you have a question to put to him.

17 EXAMINATION BY MR. BRUNO:
18 Q. I thought we had established the big beef was
19 that the pharmacological effects had an impact
20 versus the behavioral. We all agreed that the
21 Surgeon General had the view that the pharmacologic
22 effects were the primary component, and you said
23 that was the big controversy, that you came on the
24 other side, you said it was the behavioral component
25 that you said was more primary.
26 Now you're telling the jury, I think, tell me
27 if I'm wrong, that you agree with the Surgeon
28 General that it's the pharmacologic effect which is
29 primary. Is that what you're telling the jury?
30 A. No. I'm telling them that I agree that
31 cigarette smoking can be -- can be classified as a
32 nicotine addiction in the fact that there is a mild

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1 dependence to nicotine from cigarette smoking. That
2 does not mean that I agree that that's the
3 overriding part of cigarette smoking dependence.
4 Q. Can that be a moderate degree of dependence?
5 A. The nicotine addiction part?
6 Q. Yes.
7 A. Well, there's no -- I would say no because
8 there's no evidence that you can get a human being
9 moderately dependent on the drug nicotine.

10 Q. Does the Surgeon General take the position
11 that you can't be moderately dependent on nicotine?
12 A. I'm not sure the Surgeon General goes into
13 that pure nicotine effect because there's just no
14 evidence that people do that.
15 Q. Do you know or you don't know? You don't
16 know, it's okay.
17 A. Yeah. I don't know.
18 Q. You don't know. Certainly, then, you don't
19 know if the Surgeon General has the view that
20 nicotine can produce a severe degree of dependence?
21 A. I've read that report, but it's, as you know,
22 big, and I don't remember everything about it.
23 Q. Well, the degree to which your view is in the
24 minority, whatever that view is, would you agree
25 with me that it is important for this jury to know
26 that this Kentucky Tobacco and Health Research
27 Institute, which is, clearly, you've told us, one of
28 your big funding sources, or had been in the past,
29 that that institute had on its board a gentleman
30 named Ernest Pepples, who was the Brown and
31 Williamson general counsel? Would that be something
32 that they ought to know?

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1 A. If you want to tell them that. I have heard
2 that myself, but -- that's on the board.
3 Q. Did you tell them that?
4 A. I wasn't asked. I only answer questions that
5 I'm asked.
6 Q. And we've already established Kentucky is
7 very dependent upon tobacco farmers in its economy,
8 right?
9 A. Yes.
10 Q. And those tobacco farmers can be pretty vocal
11 on the subject of these -- this litigation of
12 cigarettes and health, right?
13 A. That's outside of my areas of -- but I assume
14 that, like anyone else, that's probably right.
15 Q. Would you agree that the attitudes of people
16 who live in Kentucky are a lot more pro cigarettes
17 than elsewhere?
18 A. Once again, it's not anything that I'm an
19 expert on, but it's probably true.
20 Q. Well, given the fact -- should the jury know,
21 for example, that Brown and Williamson is a large
22 employer and that they're located in Louisville,
23 Kentucky, where you do your work?
24 A. Yeah. I think they had a manufacturing
25 facility there for years. Their headquarters are
26 still there.
27 Q. And should they know that because of the
28 degree to which people in Kentucky approve cigarette
29 smoking that their death rate for smoking
30 attributable deaths is 387 per 100,000, whereas, for
31 the whole -- for each of the states in the country,
32 it's only 295 per 100,000?

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1 MR. LONG:
2 Objection, Your Honor. May we approach?

3 THE COURT:
4 Yes.
5 (Whereupon, a sidebar conference is held
6 as follows:)
7 MR. LONG:
8 Object to the form of the question with
9 continued reference to "should the jury
10 know." That's an issue of relevance that's
11 up to Mr. Bruno to put before the jury what
12 he wishes. It's up to Your Honor to
13 determine what's relevant. To ask this
14 witness should they know, how is his opinion
15 on what the jury should know relevant?
16 THE COURT:
17 I don't know. It's an interesting
18 question.
19 MR. LONG:
20 I don't object to the question. It's
21 just the way he's putting it, should they
22 know.
23 THE COURT:
24 He can ask it a different way.
25 You feel like rephrasing it?
26 MR. BRUNO:
27 I'll be happy to, Judge.
28 THE COURT:
29 Okay. Withdraw it and rephrase it.
30 (End of sidebar.)
31 MR. BRUNO:
32 Withdraw the question and I'll rephrase

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1 it.
2 EXAMINATION BY MR. BRUNO:
3 Q. Dr. Rowell, clearly, since you have a view
4 which is not the mainstream, this jury will be
5 called upon, one would believe, to make a
6 determination as to whether or not they should
7 believe your view or, for example, Dr. Henningfield
8 or Dr. Benowitz, right? "Yes" or "No."
9 A. The difference is in terminology. So, yes.
10 Q. That's not the question. The question is,
11 this jury, is it not, is going to be called upon to
12 decide whether or not to believe you, as opposed to
13 believing Dr. Henningfield and Dr. Benowitz,
14 correct?
15 MR. SCHNEIDER:
16 Objection, Your Honor.
17 A. Maybe they can believe both of us in certain
18 aspects. It's not all or none.
19 THE COURT:
20 There's an objection.
21 THE WITNESS:
22 Sorry.
23 MR. SCHNEIDER:
24 I withdraw the objection. He answered.
25 MR. BRUNO:
26 Can we proceed?
27 THE COURT:
28 The objection is withdrawn and I think
29 the question has been answered, Mr. Bruno.
30 MR. BRUNO:

31 That's what I thought.
32 EXAMINATION BY MR. BRUNO:
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1 Q. So that when I ask you the question: What do
2 you believe this jury needs to hear, I'm asking do
3 you believe that it's important for them to know of
4 the potential, I'm not saying anything about bias,
5 the potential for bias that you might have by virtue
6 of where you live, where you work, who you associate
7 with, who donates to the university, all those
8 thing -- those are relevant considerations, wouldn't
9 you agree?

10 A. Yes, but I'm not aware that you brought --
11 I'm not aware of any association or donations or
12 anything that affects the University of Louisville
13 School of Medicine or my research or my opinions,
14 but if you have some information, that's fine. But
15 it's relevant, I guess. That's fair.

16 Q. Has Brown and Williamson donated to that
17 university?

18 A. Not to my knowledge. Maybe so. I have no
19 idea.

20 Q. Don't know. Made that inquiry?

21 A. No.

22 Q. Okay. Now, since you're now agreeing with
23 the Surgeon General, I'm wondering if you can
24 explain to the jury your testimony that you gave in
25 the Carl Roach case where you told the -- under oath
26 you said that you thought that the Surgeon General's
27 report was slanted.

28 MR. WITTMANN:

29 Objection, Your Honor. May we approach?

30 THE COURT:

31 Yes.

32 (Whereupon, a sidebar conference is held
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1 as follows:)

2 MR. WITTMANN:

3 He cannot ask a question without a
4 preamble and giving testimony himself. He's
5 done it repeatedly. It's prejudicial to the
6 defendants, and I would ask that he be
7 restricted as strongly as possible to stop
8 doing it.

9 THE COURT:

10 Actually, the way you asked the question
11 is incorrect if you're attempting to impeach
12 him with prior inconsistent statements. You
13 know how to do it, Mr. Bruno. Do it that
14 way.

15 Is that strong enough?

16 Mr. Long has something to say.

17 MR. LONG:

18 Here is the issue: When he starts the
19 question out, "Since you now agree with the
20 Surgeon General," and if the witness catches
21 it and comes back and explains there's a
22 difference --

23 MR. BRUNO:

24 No, he's not --
25 MR. LONG:
26 Let me finish, Joe. He is going to say
27 the witness is not responding to the question
28 because the question is assuming he agrees.
29 THE COURT:
30 Make the objection. I will referee it
31 as best I can.
32 (End of sidebar.)
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1 THE COURT:
2 The objection to the form of the
3 question is sustained.
4 The jury will disregard the question.
5 Next question, Mr. Bruno.
6 EXAMINATION BY MR. BRUNO:
7 Q. Doctor, do you agree that the Surgeon
8 General, in his 1988 report, slanted --
9 A. In a way, I do, yes.
10 Q. Okay. So, how was it slanted?
11 A. There was a conscious effort by the Surgeon
12 General's 1988 report to label that as nicotine
13 addiction since, for over 20 years, since the 1964
14 Surgeon General's Report, it had been dependence and
15 all manner of dependence, and there was still a lot
16 of smoking behavior. So, there was a conscious -- I
17 think not scientifically good basis to call that
18 nicotine addiction, but maybe it was a proper public
19 health, which is his role -- a public health
20 decision to make cigarette smokers believe they were
21 addicted to the drug nicotine and that that would
22 help smoking cessation. So, I think there was a
23 conscious -- there was a conscious effort to title
24 that nicotine addiction rather than smoking
25 addiction, or smoking dependence.
26 Q. You just told the jury that it's okay to use
27 the word addiction under certain circumstances. You
28 just told him that, didn't you?
29 A. The Surgeon General, and that was the first
30 time that was done, said that smoking -- that any
31 degree of dependence is addiction, and that's where
32 I say it was a sea shift in how the word addiction
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1 is used, and now we're all used to people being
2 addicted to nicotine, and it -- maybe it was a good
3 public health decision or not. I don't know. But
4 that was the slant from the course it had been
5 taking by scientists to categorize different degrees
6 of dependence to try to -- to try to separate drugs
7 like cocaine and heroin from caffeine and nicotine.
8 Q. Did the Surgeon General compare cigarette
9 smoking to cocaine in his '88 report?
10 A. Yes.
11 Q. What did he say?
12 A. He said there were similarities, just as
13 Henningfield wrote, in the qualitative aspects of
14 these drugs.
15 Q. Okay. Now, let's talk a little bit about
16 nicotine. You showed the jury a bottle. You said

17 nobody's out there buying nicotine and snorting it
18 or smoking -- not smoking it -- silly me -- they're
19 not snorting it or taking it, right?
20 A. Right.
21 Q. Would you hold up the bottle and read the
22 label?
23 A. It says nicotine, tartrate, molecular weight,
24 462. It's a poison.
25 Q. It's a poison. It's a poison.
26 A. Right.
27 Q. You take the nicotine, it'll kill you?
28 A. If you take pure heart medication, it'll kill
29 you. I mean, any drug, in pure form, not in its
30 tablet form, is going to kill you at a certain dose.
31 Q. Might that explain why people don't go and
32 buy pure nicotine and eat it, because it'll kill

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1 them? Could that possibly explain it?
2 A. No, because you can kill yourself with
3 cocaine and heroin, too, but if you know what you're
4 doing and dilute it down and, by the way, these
5 nicotine bottles don't say poison, they're diluted
6 down. People could use nicotine legally in an
7 uncontrolled way if they wanted to avoid the health
8 hazards of cigarette smoking but still get whatever
9 pleasure they receive out of nicotine.
10 Q. Where would I go to get a book on how to
11 dilute the nicotine so I could give myself a little
12 buzz?
13 A. You'd probably go onto any college campus and
14 they figure out how to use any kind of drug in any
15 particular way and it wouldn't take them long.
16 Q. But they haven't found out about nicotine
17 yet, huh?
18 A. I think because nicotine is a did as a drug
19 of abuse. It just isn't anything --
20 Q. I don't know. Have you tried it?
21 A. I have had nicotine before.
22 Q. Get a little shot of nicotine? How was it?
23 A. I've had nicotine water, this right here.
24 Q. No, I mean a good dose. I mean a nice pop.
25 Was it a -- did it do anything?
26 A. In studies with me, my personal experience
27 and in controlled drug studies, in fact, we showed
28 the picture of how good does it make you feel,
29 nicotine comes out as kind of a, you know, weak
30 downer. It's a dud for -- compared to other drugs.
31 Q. I notice you had a demonstrative with the
32 liquid nicotine, but you didn't bring that?

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1 A. Right.
2 Q. That's because if you open up that bottle and
3 take a whiff of that, it will kill you?
4 A. No.
5 Q. Take a little dab, it won't kill you?
6 A. Depends how big the dab is.
7 Q. If you stuck your finger in there and stuck
8 it in your mouth, it would kill you?
9 A. Probably not. If you drank it, it would kill

10 you.
11 Q. Whatever. All right. So, let's get to this
12 behavior business. You have no reason to dispute,
13 do you, that most people who smoke, they want to
14 stop smoking?
15 A. That's what they say, and I have no reason to
16 dispute that.
17 Q. And you have no dispute with -- by the way,
18 what I'm referring to are published by the Center
19 for Disease Control, they report this data? That
20 is, how many folks want to quit and so forth and so
21 on.
22 A. Fine.
23 Q. Are you familiar with that data?
24 A. Yes.
25 Q. Okay. All right. About three-quarters of
26 adolescent smokers, they've attempted to quit, and
27 of that group, the majority of them, they can't
28 quit. That's true, too?
29 A. I have no reason to disagree with that.
30 Q. And more than 90 percent of young people who
31 use tobacco daily experience at least one symptom of
32 nicotine withdrawal when they've tried to quit. No

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1 reason to dispute that?
2 A. No.
3 Q. Okay. Young people vastly underestimate the
4 addictiveness of nicotine. No reason to dispute
5 that, do you?
6 A. I might dispute that.
7 Q. Oh. Why?
8 A. Because I think nicotine has very little
9 addictiveness. So, they're probably not
10 underestimating. They probably underestimate the
11 addictiveness of the behavior, but nicotine's not
12 addictive.
13 Q. That's that whole behavior versus the drug
14 component thing? And you're on the behavior side
15 and the Surgeon General is on the drug side?
16 A. Well, I challenge anybody to become addicted
17 to nicotine without the behavior. It hasn't been
18 done.
19 Q. Does it make a difference?
20 A. Not for smoking, no.
21 Q. Not for the people -- not for the person
22 who's actually stuck with the cigarette in his
23 mouth, it really doesn't make a difference, does it,
24 the degree to which the drug interacts with the
25 behavior, the behavior interacts with the drug;
26 isn't that true?
27 A. Well, it might make a difference in how easy
28 it is to quit with motivation and willpower, whether
29 it's a behavioral addiction, like gambling or
30 something, or a drug addiction, like heroin, I think
31 it does make a difference in success for quitting.
32 Q. Right. You've testified, have you not, that

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1 most folks who are mildly dependent, they've already
2 quit?

3 A. Right.
4 Q. And the people who are still smoking, those
5 are the ones who have the moderate to severe
6 dependency, right?
7 A. Behavioral dependency, right.
8 Q. Fine. But the people who are still smoking,
9 they're the ones who are in need of most help,
10 right?
11 A. Clearly, the people who have made a concerted
12 effort to quit and haven't been able to have a
13 moderate to severe behavioral dependency.
14 Q. And, in fact, you've even testified that
15 that's not much of a free choice?
16 A. Well, okay. Yes.
17 Q. You want me to read it to you? You remember
18 your deposition in the Ironworkers' Local v. Philip
19 Morris case?
20 MR. SHOLES:
21 Objection. Improper use of deposition.
22 EXAMINATION BY MR. BRUNO:
23 Q. Well, did you or did you not testify that:
24 "I don't think it is as free a choice
25 and as easy a behavior to stop once you get
26 conditioned to it and once you have this
27 behavioral dependence that comes about that
28 teenagers don't realize that that's going to
29 happen."
30 Did you say that?
31 A. I agree with that.
32 Q. Okay. Haven't changed your opinion on that,
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1 have you?
2 A. No.
3 Q. All right. So, I ask the question one more
4 time: Does it really matter to the smoker the
5 degree to which the drug causes the compulsive
6 behavior or the behavior itself causes the
7 compulsive behavior, does it really matter?
8 MR. SCHNEIDER:
9 Objection. Asked and answered.
10 THE COURT:
11 Overruled.
12 Answer the question.
13 A. Certainly, while they're smoking, it doesn't
14 really matter whether they're behaviorally dependent
15 or drug dependent. I think it does matter. I can
16 explain this a little bit more, if you're
17 interested, in how easy it is to give up that
18 behavior to cigarette smoking compared to how it
19 would be if it was a drug addiction.
20 EXAMINATION BY MR. BRUNO:
21 Q. Have you done any studies to compare how
22 difficult it is to quit smoking as opposed to how
23 difficult it is to quit cocaine?
24 A. I've looked at a lot of material on that.
25 Q. I'm sorry.
26 A. Yes. In the laboratory.
27 Q. Let's try it one more time.
28 A. Okay. Sorry.
29 Q. Have you done any studies yourself to
30 determine how difficult it is to quit cigarette

31 smoking as compared to quitting the use of cocaine?
32 A. I have not conducted those experiments
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1 myself.
2 Q. Have you done any studies to compare how
3 difficult it is to quit marijuana as compared to how
4 difficult it is to quit cigarettes?
5 A. I have not conducted those studies myself.
6 I've -- there are studies.
7 Q. There are some studies out there?
8 A. And I've studied the studies.
9 Q. Why did you study the studies?
10 A. Because it involves the extent to which
11 nicotine is involved in the cigarette smoking, which
12 is my area of research and my area of emphasis, and
13 how much it drives cigarette smoking behavior.
14 That's key to understanding smoking behavior.
15 Q. Now, with regard to cessation, that is,
16 assisting individuals from stopping the cigarette
17 use, you agree, don't you, because you say there's
18 this behavioral component, that in order to help
19 people stop smoking, you have to give them some help
20 with regard to behavioral modification?
21 A. Well, not everybody, but some people will
22 benefit from that, certainly.
23 Q. We have to back up again. I thought we just
24 decided that the mild folks, they've already
25 stopped. The people who are left are the moderate
26 to severe. Are we changing that opinion?
27 A. I think that is my opinion, and if it was
28 easy to quit and they wanted to quit, they'd quit.
29 Q. Exactly. So, why talk about them if they
30 already quit? We're talking about the folks who
31 haven't quit.
32 A. Right, but that doesn't mean they'll benefit
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1 from behavioral intervention or therapy.
2 Q. Did you testify to that?
3 A. As a group, they won't. On an individual
4 basis, I don't know.
5 Q. All right.
6 A. When you said "they," I thought you were
7 talking about individuals. As a group, behavioral
8 assistance would certainly help and has been shown
9 to help.
10 Q. So, you would agree then that if we were
11 successful in this case and that the jury should
12 find a cessation program to be an appropriate
13 remedy, that that cessation program should contain
14 some programs to assist people with their behavior
15 modification, right?
16 A. Yes.
17 MR. BRUNO:
18 Judge, it is the time that you said you
19 wanted to break.
20 THE COURT:
21 We'll recess until 3:00 by the wall
22 clock.
23 (Jury excused.)

24 THE COURT:
25 Let the record reflect the jury has left
26 the courtroom.
27 MR. RUSS HERMAN:
28 No, Your Honor.
29 THE COURT:
30 Anything for the record by plaintiffs?
31 MR. RUSS HERMAN:
32 Yes. We received a brief, which asked
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1 for an advisory opinion, which we strongly
2 agree with the Court's position on it, will
3 be able to support it, I should have a brief
4 on it for you tomorrow afternoon. I think
5 the law is very clear and Your Honor --

6 THE COURT:
7 Are you referring to Defendants' Motion
8 to Incorporate a Memorandum to Preclude
9 Cross-examination Questions That Seek to
10 Elicit Testimony From Expert Witnesses
11 Concerning Matters Beyond Their Personal
12 Knowledge and Recognized Expertise?

13 MR. RUSS HERMAN:
14 Yes, I am. Just so everybody is
15 prepared, I think the comments to 703(c) --

16 THE COURT:
17 I'm not interested in hearing argument
18 on it. I will hear argument on it when it's
19 set after you respond.

20 MR. RUSS HERMAN:
21 Yes, Your Honor.

22 THE COURT:
23 Anything else?

24 MR. RUSS HERMAN:
25 That's it.

26 THE COURT:
27 Defense counsel, anything else for the
28 record?

29 MR. WITTMANN:
30 No, Your Honor.

31 THE COURT:
32 We'll recess until 3:00.

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1 (Whereupon, a brief recess is taken.)

2 THE CLERK:
3 All rise for the jury, please.
4 (Jury seated.)

5 THE LAW CLERK:
6 All rise. Recess is over. Court will
7 come to order.

8 THE COURT:
9 Please be seated.

10 Mr. Bruno?

11 EXAMINATION BY MR. BRUNO:

12 Q. Dr. Rowell, referring to the Jed Roach study,
13 are you telling the jury that the smokers in that
14 study were not able to determine they were smoking
15 denicotinized cigarettes?

16 A. They probably could tell. I don't know.

17 Q. Well, if they could tell that they were
18 smoking denicotinized cigarettes, could you tell the
19 jury which of the two, denicotinized cigarettes
20 versus nicotinized cigarettes, would be their
21 choice?
22 A. Well, according to the cigarettes, the
23 regular cigarettes they were used to, their usual
24 brand, was a little bit more satisfying than the
25 denicotinized cigarettes with the nicotine in it.
26 Q. Does that suggest that the cigarette
27 manufactures could manufacture a cigarette without
28 nicotine and it would satisfy smokers?
29 A. No. That study really doesn't suggest that.
30 That study suggests that an acute desire to smoke
31 overnight, they are -- the craving to smoke is
32 satisfied by the act of smoking, but in a long-term

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1 situation, it's very possible that they would not
2 find a nonnicotine-containing cigarette desirable.
3 In fact, that's been shown on the marketplace.
4 Q. Well, if it's mostly compulsive, couldn't the
5 cigarette manufactures manufacture something that
6 would allow the smoker to do what they do with the
7 cigarettes and all that business and not have any of
8 the harmful constituents in the smoke? Wouldn't
9 that be real easy to do if it's all just a
10 behavioral thing?

11 MR. WITTMANN:

12 Objection, Your Honor, beyond the scope.

13 THE COURT:

14 Overruled.

15 Answer the question if you're able to.

16 A. Well, not really, because all of the harmful
17 parts of the cigarette are in the smoke, and the
18 nicotine is actually not the health hazard. It's
19 all the things in the smoke. So, to make a
20 cigarette that you take the one thing out that
21 really isn't a hazard and leave all the smoke in,
22 that wouldn't be -- they would certainly not be able
23 to find that not a health hazard.

24 EXAMINATION BY MR. BRUNO:

25 Q. Maybe I misunderstood what you meant by "pure
26 behavior." I thought you meant by pure behavior, it
27 was just a movement, the hand to the mouth, the hand
28 to the mouth. You're not ingesting anything if it's
29 purely behavioral, right?

30 A. No. It's not just the hand to the mouth. I
31 said that was part of it. Clearly, the aroma, the
32 taste, even the smoke, the impact I talked about a

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1 little bit, because smokers always talk about they
2 can tell how strong a cigarette is on the impact,
3 and partially the psychological effects of nicotine,
4 which it has a little bit of. All these things
5 contribute. But the repetitive, ritualistic nature
6 of the cigarette smoking is important.
7 Q. The testimony is they couldn't then make
8 something which would allow them to puff in some
9 smoke without any of those harmful effects and kind

10 of blow it out, they would need to have the nicotine
11 in order to make it a satisfactory cigarette, right?
12 A. It appears that they need to have some
13 nicotine to make it a satisfactory cigarette next to
14 a cigarette that has nicotine. In other words,
15 cigarettes that have been extremely low nicotine or
16 non-nicotine cigarettes when they're in the cabinet
17 right next to the regular cigarettes have not sold
18 well at all, and been a market flop. Whether
19 cigarette smokers, if that's all they could get,
20 would smoke a cigarette -- I don't think you can
21 take the smoke out. That's part of the act. But if
22 you just took the nicotine out, I think the flavor
23 would be pretty bad. That's what's been reported,
24 anyway. But whether individuals would continue to
25 smoke that because of their behavioral dependency,
26 nobody knows that. Cigarettes are still on the
27 market.

28 Q. Well, I'm wondering, do you believe that a
29 manufacturer of a product which, in some fashion,
30 produces compulsive use of the product can gain some
31 profit by virtue of the fact that it's compulsive?

32 A. Well, I guess so, yes.

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1 Q. All right. Would you believe that a
2 manufacturer would want to find out -- or might be
3 motivated to find out what makes it compulsive in
4 order to sell more of that product?

5 A. Yeah, I guess so.

6 Q. And do you see any evidence of the cigarette
7 companies having studied what it is about the
8 cigarette that makes people use it compulsively?

9 A. Yes. The cigarettes -- companies, mostly
10 through the Council for Tobacco Research, funded
11 lots of research on nicotine and smoking, and they
12 did a lot of study themselves mostly on marketing on
13 what cigarettes sold better and what the components
14 were, and they tried to reverse-engineer their
15 competitors' brands.

16 Q. They wanted to know what it was about their
17 cigarettes that made people use it compulsively so
18 that they could change their design to make it even
19 more compulsive, right?

20 MR. SHOLES:

21 Objection. Speculative.

22 A. I don't know about that.

23 MR. WITTMANN:

24 Just --

25 THE COURT:

26 The objection is overruled.

27 Answer the question, please.

28 A. They did those studies, mostly marketing
29 studies, but, of course, they also did a lot of
30 studies on trying to find out what the health
31 hazards were and try to remove those.

32 EXAMINATION BY MR. BRUNO:

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1 Q. We're not talking about the health hazards
2 right now. Just talking about the compulsive

3 behavior. You admit, gosh, if you could make a
4 product the use of which was compulsive, you could
5 make a whole lot of money, right?
6 A. Right, but if that product wasn't harmful or
7 intoxicating in any way, we wouldn't be talking
8 about it.
9 Q. Well, the cigarette companies for years said
10 it wasn't harmful?
11 A. Well, I think they said there was a
12 controversy about the claims of health hazards.
13 Q. The point is, they weren't telling folks,
14 hey, man, this is bad stuff. They're saying,
15 there's a controversy, so, go ahead and use it,
16 right?
17 A. Well, it's not my area of expertise, what
18 they said.
19 Q. Let's take it from this perspective: You
20 would agree, that when it comes to the -- that part
21 of the cigarette which is the bad part, all right,
22 it's that part of the cigarette that makes its use
23 compulsive, right?
24 A. Well, no. I think the behavior -- the bad
25 part of the cigarette is the tars and the aromatic
26 hydrocarbons and the carbon monoxides. Those are
27 the health hazards -- cancer causing health hazards
28 that are in the smoke and the pyrolysis product or
29 heating products of the smoke. The behaviors are
30 more complex than that. All those things introduce
31 the health hazards into the body.
32 Q. Let's be realistic here. We all agree, one
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1 puff doesn't give you cancer, right?
2 A. Probably, no.
3 Q. One pack doesn't give you cancer?
4 A. Right.
5 Q. It's the prolonged, repetitive exposure to
6 the cigarette smoke that causes all these diseases,
7 right?
8 A. For some people, right.
9 Q. Those who get sick, it's the repetitive,
10 compulsive use, correct?
11 A. It's the -- well, it's the smoke. It's the
12 constituents of the smoke. It's not the back-and-
13 forth, you know, sucking on a straw. It's the tar,
14 basically.
15 Q. All I'm trying to see if we agree on, it's
16 not just one puff; it's a lot of puffs?
17 A. Right.
18 Q. And it's a lot of puffs over a long period of
19 time, right?
20 A. Yes.
21 Q. And, so, if cigarette smoking wasn't
22 compulsive, it wouldn't be that dangerous, would it?
23 A. No, if it wasn't used often, it probably
24 wouldn't contribute to the number of health risks
25 that are found.
26 Q. Precisely. You would agree with me then that
27 the most dangerous component of this cigarette is
28 whatever it is that makes people use it
29 compulsively, right?
30 A. Right.

31 Q. Okay. Now, do you believe in the engineering
32 principle that a manufacturer ought to make its
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1 product as safe as it can as long as it's feasible
2 to do so?

3 A. As long as it's feasible to do so, sure.

4 Q. All right. And you would agree in the
5 context of cigarettes, you really want to get down
6 to it, if you could figure out what it is that makes
7 the use of cigarettes compulsive, you might be able
8 to do something to make it less compulsive, right?

9 A. Well, that would be tough to figure out, but,
10 yes.

11 Q. Fine. All I'm saying is this: You testified
12 that the cigarette companies didn't do any research
13 at all with regard to what it is that makes it
14 compulsive that wasn't already done in the public
15 sector, right?

16 A. Well, they funded research that was in the
17 public sector. So, in that sense, they were doing
18 the research by funding projects.

19 Q. Well, did they or didn't they?

20 A. But they -- they --

21 Q. I'm sorry. I thought you testified this
22 morning, maybe I misunderstood it, you said that
23 there's nothing in the documents that the defense
24 lawyers got from the plaintiff lawyers that
25 demonstrated that this research that the cigarette
26 companies did that they allegedly withheld was
27 anything new, that anything was already out in the
28 public sector. That's what you told the jury?

29 A. Right. But that doesn't imply that they
30 didn't fund some of that research. They didn't
31 have -- there was not undisclosed scientific
32 information in the tobacco documents that was new.

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1 Q. All I'm saying --

2 A. That's true.

3 Q. -- Doctor, is this. That if a manufacturer
4 is presumed to know more about its product than
5 anybody else on the planet, then, these cigarette
6 companies were derelict because they didn't bother
7 to find that out; isn't that true?

8 MR. WITTMANN:

9 Objection, Your Honor.

10 May we approach?

11 THE COURT:

12 You may approach.

13 (Whereupon, a sidebar conference is held
14 as follows:)

15 MR. WITTMANN:

16 Question calls for a legal conclusion,
17 Your Honor.

18 THE COURT:

19 I think it probably does, and I'm going
20 to sustain the objection to the question.

21 You wanted to say something, Mr. Bruno?

22 MR. BRUNO:

23 Then, Judge, may I ask that you instruct

24 the jury as to the legal standard in this
25 community, that a manufacturer is presumed to
26 know more about its product than anybody
27 else?
28 THE COURT:
29 I may do that at the appropriate time,
30 but not now.
31 (End of sidebar.)
32 THE COURT:
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1 Objection sustained.
2 Don't answer that question.
3 The jury will disregard the question.
4 Next question, please.
5 EXAMINATION BY MR. BRUNO:
6 Q. If it is a true statement that the
7 manufacturer is presumed to know more than anything
8 else in the world about its product, you would have
9 to agree, based upon your testimony this morning,
10 that these cigarette companies were derelict in that
11 duty, wouldn't you?
12 MR. WITTMANN:
13 Objection, Your Honor.
14 THE COURT:
15 Let's finish the question. Had you
16 finished your question?
17 MR. BRUNO:
18 Yes, sir.
19 THE COURT:
20 Sustained.
21 Next question, please.

22 EXAMINATION BY MR. BRUNO:
23 Q. You've suggested that nicotine is not
24 harmful, haven't you?
25 A. Overall, nicotine is not harmful, right.
26 Q. Doesn't it cause ill effects to the
27 cardiovascular system?
28 A. These are minor effects that have not been
29 shown to be really dramatically harmful any more
30 than caffeine, but that is a negative thing.
31 There's positive things to caffeine as well.
32 Overall, I think nicotine is not harmful, actually
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1 may be beneficial, pure nicotine.
2 Q. You've even said that nicotine could be good
3 for a fetus, right?
4 A. Good for a fetus?
5 Q. Yeah.
6 A. I don't think I said that.
7 Q. Okay. Do you remember your testimony in --
8 on April 26, 2002, when you were asked the question:
9 Okay, sir. In your opinion, it could, in fact, be
10 good for the health of a fetus when the nicotine
11 passes through the placenta into the fetus?
12 A. I don't remember that. I can conceptualize
13 that it could be, but I didn't remember saying that.
14 Q. All right. So, you even think nicotine could
15 be good for the fetus inside the mama?
16 A. Nicotine has neuroprotective effects that

17 have been shown to prevent Parkinson's disease,
18 Alzheimer's, things, like that. There's
19 experimental studies. I guess you could hypothesize
20 that pure nicotine could have that effect.
21 Q. The cigarette companies, they compared
22 cigarette smoking to drugs such as marijuana,
23 amphetamines and alcohol, haven't they?
24 A. Could you show me the study?
25 Q. Yes.
26 MR. BRUNO:
27 Could we call up, please, Carl, Scott
28 Exhibit Number 1724? It's a B & W document
29 that has already been introduced.
30 May I publish it?
31 THE COURT:
32 Objection?

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1 MR. SCHNEIDER:
2 It has been admitted over objection,
3 Your Honor.
4 THE COURT:
5 You may publish.
6 MR. BRUNO:
7 Can we highlight the paragraph that is
8 little (i), under Speed?
9 EXAMINATION BY MR. BRUNO:
10 Q. You want to read that, Doctor, to yourself?
11 A. I've read it. I've seen this document
12 before, too.
13 Q. You've seen it before. They are saying that
14 other drugs, such as amphetamines, marijuana,
15 alcohol are slower and may be mood dependent.
16 You've seen the studies on this?
17 A. No. This is research. This could easily
18 have been read from published literature, and I
19 think it was. I haven't seen the studies that back
20 this up the companies did.
21 Q. You haven't seen the studies?
22 A. I would be glad to see them.
23 Q. We've got a document to wrap this up.
24 This document, does it not, suggest that
25 Brown and Williamson was of the view that nicotine
26 was the primary reason why people smoked?
27 MR. SCHNEIDER:
28 Objection, Your Honor.
29 May we approach?
30 THE COURT:
31 Yes.
32 (Whereupon, a sidebar conference is held

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1 as follows:)
2 MR. SCHNEIDER:
3 He said does it show what Brown and
4 Williamson's views were. This is a document
5 from BATCO, not Brown and Williamson. So, I
6 object on that basis.
7 THE COURT:
8 Overruled.
9 (End of sidebar.)

10 THE COURT:
11 The objection is overruled.
12 Answer the question if you're able to.
13 A. Could you repeat the question?
14 EXAMINATION BY MR. BRUNO:
15 Q. Doesn't this document demonstrate that Brown
16 and Williamson, they believed, that smokers smoked
17 for nicotine?
18 A. I don't know that you could get that out of
19 there. This certainly says that they're aware of
20 information, and I've read this "Ten Seconds to the
21 Brain," which was published literature, they're
22 aware of that and they're aware that this is
23 important for cigarette smoking.
24 Q. Okay.
25 A. That's as fair as I can make it.
26 Q. Let's go to the last page.
27 MR. BRUNO:
28 Can we go to the last page, Carl?
29 May I publish it, Judge?
30 THE COURT:
31 You may publish it.
32 EXAMINATION BY MR. BRUNO:
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1 Q. You have seen this document.
2 MR. BRUNO:
3 Let's blow up the Summary.
4 EXAMINATION BY MR. BRUNO:
5 Q. Says here:
6 "The cigarette is the perfect type of a
7 perfect pleasure. It is exquisite and it
8 leaves one unsatisfied. What more can one
9 want?"
10 That refers to, at least in their minds,
11 the effects of cigarettes.
12 A. Yes.
13 Q. This compulsive behavior, that doesn't leave
14 someone unsatisfied, does it?
15 A. I think it could, yes.
16 Q. It could?
17 A. Sure.
18 Q. So, if you don't do this --
19 A. There are behavioral dependencies which leave
20 people unsatisfied if they can't engage in them,
21 gambling addiction, for example. You're
22 unsatisfied. So, I don't know what -- whether you
23 could broadly say that that means it's all nicotine.
24 Q. What percentage of gamblers are abusers?
25 A. I don't know, but it would be low.
26 Q. It's low. What percentage of people who use
27 alcohol are abusers?
28 A. Low again, probably.
29 Q. Low again. What percentage of cocaine users
30 are abusers?
31 A. It's -- would be higher for cocaine.
32 Q. Higher. Still relative, not a big percent?
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1 A. There are cocaine users who are not -- who
2 are infrequent users, weekend users.

3 Q. When it comes to cigarettes, most cigarette
4 users report compulsive behavior, right?
5 A. Most do, right.
6 Q. Most do. That's what makes cigarettes
7 unusual and not like all these other things that you
8 talked about today?
9 A. Yes.
10 Q. Let's pull up the last document and we'll be
11 done. Plaintiffs' Exhibit Number -- Scott Number
12 2413.
13 MR. BRUNO:
14 This has been admitted, Judge. I
15 apologize. I should have known this.
16 May I publish?
17 THE COURT:
18 Is it agreed that that document is in
19 evidence?
20 MR. SCHNEIDER:
21 No, Your Honor. May we approach?
22 THE COURT:
23 Yes.
24 (Whereupon, a sidebar conference is held
25 as follows:)
26 MR. SCHNEIDER:
27 I'm sorry. I couldn't confirm quickly
28 enough whether it's been admitted. Mr.
29 Gertler tells me it has from a video
30 deposition, and I'm willing to accept that.
31 (End of sidebar.)
32 THE COURT:
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1 The objection is withdrawn.
2 2413. You may publish.
3 EXAMINATION BY MR. BRUNO:
4 Q. Doctor, you told the jury that, "you hadn't
5 seen any studies." Okay?
6 MR. BRUNO:
7 Well, would you blow up the first
8 sentence of this document?
9 EXAMINATION BY MR. BRUNO:
10 Q. Says here: Pursuant to Earl Kornhorst's
11 request, I met with Earl, Gil Esterle and David
12 Gordon to discuss whether B & W should receive
13 reports from certain projects to be done at the
14 laboratories of affiliated companies.
15 MR. BRUNO:
16 Go to the second paragraph and blow it
17 up.
18 EXAMINATION BY MR. BRUNO:
19 Q. Have you seen this document?
20 A. I can't remember it. I think I have.
21 Q. Says -- oh, you think you have?
22 A. I think I have. I --
23 Q. I don't want to waste everybody's time. This
24 document stands for the proposition that B & W did
25 not want to have the reports of the research sent to
26 it because it wanted to keep it from plaintiff
27 lawyers, like these good men at these two tables.
28 Isn't that what this document stands for?
29 A. I hope you're not suggesting that this is a
30 scientific study that would be peer-reviewed. As I

31 mentioned earlier, my focus in looking at the
32 documents is to uncover scientific experimental
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1 studies, see if they impart new or significant
2 knowledge. I think I've seen this because I
3 remember the BAT science subject meeting.
4 Q. I've got to ask now because I don't know if
5 you're qualifying your testimony. Are you saying
6 that a company that does its own research, it's not
7 really research unless it gets published and it's
8 peer-reviewed, is that what you're telling the jury?
9 A. No, I'm not saying that. I'm saying a
10 publishable study has to be a study that has an
11 experimental design, hypothesis being tested,
12 methods. It's not a statement somebody makes it
13 a -- in a memo saying something.
14 Q. No one says it was. This stands for the
15 proposition that all of the research that was done
16 in Europe would not be sent to the United States so
17 that it could be kept out of the hands of plaintiff
18 lawyers.

19 MR. SCHNEIDER:

20 Objection.

21 A. They're referring, I believe, to the Battelle
22 research, which were scientific studies, and I've
23 read those. I don't know whether this attorney is
24 suggesting that that's the case. That's a lawyer
25 making the decision. It doesn't affect the science.

26 EXAMINATION BY MR. BRUNO:

27 Q. Well, the bottom line is that might explain
28 why it might be that those research reports, those
29 studies, that science, might not be in that country,
30 right? That might explain it?

31 A. Well, those studies are in the country
32 because I read them, I think, if it's the Battelle
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1 research, the European Battelle research. I can't
2 testify to things I've had no knowledge of or never
3 seen.

4 Q. One last thing.

5 MR. BRUNO:

6 Can we pull up the on the memorandum to
7 whom this is being sent?

8 EXAMINATION BY MR. BRUNO:

9 Q. Pepples, see that?

10 A. Yes.

11 Q. That's the same Pepples who was on the board
12 of the institution that funded all of your grant
13 work?

14 A. Well, he didn't fund all my grant work, first
15 of all.

16 Q. Most?

17 A. Not even most.

18 Q. Some?

19 A. Some.

20 Q. Thanks.

21 A. I don't know the individual, but that's what
22 you told me, so, I have no reason to doubt that.

23 MR. BRUNO:

24 I have no further questions. Thank you,
25 Doctor, for your responses.
26 THE WITNESS:
27 You're welcome.
28 THE COURT:
29 Redirect?
30 MR. SCHNEIDER:
31 Yes, Your Honor.
32 Is it all right with you if I stand
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1 amongst you?
2 MR. RUSS HERMAN:
3 It's all right.
4 MR. BRUNO:
5 It would be our pleasure. Come over to
6 our side.
7 RE-DIRECT EXAMINATION BY MR. SCHNEIDER:
8 Q. Good afternoon, Dr. Rowell. Just some brief
9 questions on redirect.
10 Now, Dr. Rowell, you have heard
11 allegations and also statements by scientists
12 calling smoking a drug-driven behavior that
13 interferes with quitting, correct.
14 A. Yes.
15 Q. And you have heard it said that nicotine, or
16 alleged that nicotine is the sole reason that people
17 smoke, correct?
18 A. Well, I've certainly heard that it is by far
19 the primary reason why people smoke.
20 MR. WITTMANN:
21 Doc, I think you're still not on.
22 MR. SCHNEIDER:
23 Still not on? Now, I'm on, I think.
24 I'm sorry.

25 EXAMINATION BY MR. SCHNEIDER:
26 Q. And on this whole question of the extent to
27 which nicotine drives smoking behavior, you brought
28 us the science, didn't you, today?
29 A. Yes.
30 Q. And you went over what the scientific
31 research and your own studies have shown in terms of
32 the strength of nicotine, correct?
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1 A. That's correct.
2 Q. You were asked some questions about
3 GK-000487, which is an article by Dr. Henningfield,
4 and it's one that you relied on in one of your
5 charts called "Pharmacologic Basis and Treatment of
6 Cigarette Smoking." Are you familiar with that
7 article?
8 A. Yes.
9 Q. Dr. Henningfield says in that article that
10 tobacco contains a drug of abuse that is equivalent
11 to the cocaine in cocoa leaves and ethanol in
12 alcoholic beverages. Have you heard him make that
13 allegation?
14 A. Yes.
15 Q. It's also said that to the extent the
16 experimentation leads to ultimate chronic use,

17 tobacco appears to have an addictive potential,
18 similar to that of opium. That's Dr. Henningfield.
19 You heard him say that?
20 A. I've heard him say that.
21 Q. And you came to this courtroom to address
22 that, did you not?
23 A. I did.
24 Q. And you brought us the science on whether or
25 not, in fact, nicotine has the same dependence or
26 addiction potential as opium and other drugs of
27 addiction, correct?
28 A. Yes.
29 Q. And Mr. Bruno said to this jury that your
30 science was not controversial. Did you hear him say
31 that?
32 A. Yes.

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1 Q. So, what you were telling us about the
2 degrees to which dopamine was released by these
3 various drugs, as I heard Mr. Bruno say and you
4 agreed, it's not controversial, correct?
5 A. Correct.
6 Q. That nicotine releases far less or causes the
7 release of far less dopamine than drugs like
8 cocaine, morphine, correct?
9 A. That's -- that's true -- that's been shown,
10 yes, in science.
11 Q. And that nicotine is far less reinforcing
12 than cocaine, heroin and other drugs, correct?
13 A. Absolutely.
14 Q. And, in your words, you said that based on
15 the science that you shared with this jury that we
16 went over in great length with all of these charts,
17 that nicotine is a very weak drug, correct?
18 A. Yes.
19 Q. And, in your opinion, Dr. Rowell, can
20 nicotine interfere with a person's ability to quit?
21 A. It can interfere mildly, probably, with
22 short-term withdrawal symptoms.
23 Q. Does it ultimately prevent any smoker that
24 wants to quit from quitting?
25 A. It doesn't ultimately prevent quitting.
26 Q. Now, you were asked some questions about
27 studies from England, from the British American
28 Tobacco Company, correct?
29 A. Yes.
30 Q. You were asked about a document, 1724, which
31 I won't put up, but I will hold up for you. Do you
32 recall seeing that document on the screen?

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1 A. Was that the last one that was just up there?
2 Q. Let's go ahead and do put up 1724, if we
3 could publish that document.
4 MR. SCHNEIDER:
5 Can I ask the plaintiffs to publish
6 that? Do we have it?
7 MR. RUSS HERMAN:
8 Yes. Carl, pull it up.
9 MR. SHOLES:

10 It's on the screen.
11 MR. SCHNEIDER:
12 Could we publish this page?
13 THE COURT:
14 You may.
15 EXAMINATION BY MR. SCHNEIDER:
16 Q. Is that the document you were shown?
17 A. Yes.
18 Q. This article says on the cover paper 7, Colin
19 Greig. Do you know who Colin Greig is?
20 A. No, I don't.
21 Q. Do you know if he's an employee of Brown and
22 Williamson?
23 A. No.
24 Q. Do you know anybody from Brown and
25 Williamson?
26 A. No.
27 Q. You've never met anybody from the Brown and
28 Williamson Tobacco Company?
29 A. I've probably talked to scientists at
30 meetings. I don't know whether they were from Brown
31 and Williamson. I mean, if they were scientists --
32 I certainly haven't met any executives or anybody
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1 like that.
2 Q. For example, Mr. Pepples that Mr. Bruno was
3 asking you about, do you know him?
4 A. No.
5 Q. To your knowledge, has Mr. Pepples ever ruled
6 on any grant that you sought from the Kentucky
7 Tobacco and Health Institute?
8 A. No, I'm pretty sure that he hasn't because I
9 know they have a scientific advisory committee of
10 Ph.D.s and M.D.s that critique and approve the
11 grants. The board of directors doesn't approve or
12 disapprove the grants. But he may be on the board.
13 Q. And any grant that you sought, any research
14 design that you sought funding for from the Kentucky
15 Tobacco and Health Institute, you received that
16 grant, did you not?
17 A. Yes.
18 Q. And those were research ideas that you came
19 up with on your own, correct?
20 A. Correct.
21 Q. Let me ask you to turn to Page 1 of this
22 document, if you could. It's the first page after
23 the cover page.
24 MR. SCHNEIDER:
25 Can we publish that, Your Honor?
26 THE COURT:
27 You may publish.
28 EXAMINATION BY MR. SCHNEIDER:
29 Q. If I ask you to look at the top title of that
30 document, what does it say, "Structured Creativity
31 Group"?
32 A. Right.
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1 Q. Do you know what a structured creativity
2 group is?

3 A. No.
4 Q. But you said you've read through this
5 document?
6 A. Yes.
7 Q. Do you recall this gentleman, in writing this
8 document, talks about observations of his mother-in-
9 law?
10 A. I don't recall that.
11 Q. You don't. Let me ask you if you could turn
12 into the document -- four pages into it. I think
13 that's it.
14 MR. SCHNEIDER:
15 Can we publish, Your Honor?
16 THE COURT:
17 You may publish.
18 EXAMINATION BY MR. SCHNEIDER:
19 Q. Go ahead and put that up on the screen,
20 please. Go down to the bottom, that first sentence
21 there. Where it says: "Observation of my
22 mother-in-law tends to confirm the point." You see
23 that?
24 A. Yes.
25 Q. Have you often seen scientific reports based
26 on observations of mother-in-laws?
27 A. No.
28 Q. And the last page where you were being read
29 "A cigarette is the perfect type of a perfect
30 pleasure," that's actually a quote from a book, The
31 Picture of Dorian Gray, in 1891, is it not?
32 A. Yes.

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1 Q. Written by Oscar Wilde?
2 A. Right.
3 Q. Which goes back to your testimony that we've
4 been talking about nicotine and its effects for a
5 long time, certainly since the 1800s, correct?
6 A. Correct.
7 MR. SCHNEIDER:
8 You can take that down. Thank you for
9 your help on that one.
10 EXAMINATION BY MR. SCHNEIDER:
11 Q. Now, Dr. Rowell, during your examination
12 today and yesterday, have the plaintiffs presented
13 to you any research study or document from a tobacco
14 company that contained new, breakthrough information
15 about nicotine and addiction?
16 A. They have not presented those to me today or
17 yesterday, no, or ever.
18 Q. Something that was different than what was
19 published in the published literature?
20 A. No.
21 Q. And have you, during the course of your
22 review, reviewed scientific research from the
23 British American Tobacco Company?
24 A. Yes.
25 Q. And have you reviewed scientific research and
26 memoranda from the defendants in this case, RJR,
27 Lorillard, Philip Morris, Tobacco Institute, and my
28 client, Brown and Williamson?
29 A. Yes, all of those.
30 Q. And have you seen in any of those documents

31 any new, scientific breakthrough that was not
32 published in the contemporary scientific literature?
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1 A. I have not seen any breakthroughs or things
2 that made a significant difference. There were some
3 new things here and there. First of all, there were
4 very few real scientific studies, and the few that
5 there were did not contribute to any break through
6 in our knowledge from what was already being done by
7 the thousands of researchers in the country.

8 Q. Just to reiterate, in closing, Dr. Rowell,
9 the basic point that you have made for us over the
10 past couple of days, is it correct that what you
11 were saying is that nicotine is a weak drug and that
12 smoking behavior seems to be driven, in large part,
13 by the behavior of smoking and is not driven by a
14 drug compulsion? Is that your basic opinion?

15 A. I know nicotine is, by itself, in pure form,
16 is a weak reinforcer and produces really no evidence
17 of dependence on pure nicotine. So, my observation
18 is that cigarette smoking and, also, other studies
19 have shown this, is very much a behavioral
20 complexity and is a large component of behavioral
21 dependency.

22 Q. When a person has a behavioral dependency, it
23 takes the person making a decision to stop that
24 behavior, correct?

25 A. Sure.

26 Q. Have you tracked the data with respect to how
27 many Americans have quit smoking?

28 A. Yes.

29 Q. And what is that data?

30 A. It's about 50 million Americans.

31 Q. Fifty million Americans have quit smoking.

32 Based on all of the things that you have studied, is
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1 there anything in cigarette smoking behavior or in
2 nicotine that prevents a person who wants to quit
3 from quitting?

4 A. No, there's nothing that really prevents them
5 from quitting with motivation and willpower. They
6 can quit.

7 MR. SCHNEIDER:

8 Thank you, Dr. Rowell. I appreciate you
9 coming.

10 MR. BRUNO:

11 May we approach, Judge?

12 (Whereupon, a sidebar conference is held
13 as follows:)

14 MR. BRUNO:

15 Judge, this 50 million business is brand
16 new. It wasn't handled on direct. I would
17 like to recross on that issue.

18 THE COURT:

19 Denied.

20 MR. WITTMANN:

21 While we're here, Joe, Your Honor, it's
22 19 minutes till. I've got a deposition there
23 that's going to take about an hour. I don't

24 have to read it right at this moment, I would
25 consider asking the Court if it would
26 consider adjourning a little bit early.
27 THE COURT:
28 I intend to.
29 MR. WITTMANN:
30 Okay.
31 (End of sidebar.)
32 THE COURT:
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1 You may step down.
2 Ladies and gentlemen, I have two
3 announcements I want to make. The first is
4 that on tomorrow morning, this courtroom is
5 going to be used for a Law Day ceremony.
6 Tomorrow, May 1, is Law Day, and being
7 celebrated. Judge Belsome has a ceremony
8 commemorating Law Day. We will not be able
9 to have any testimony in the morning. You're
10 certainly welcome to come here and attend the
11 Law Day ceremony if you're interested. It's
12 going to start at 9:00.
13 But we will resume the testimony in this
14 case at 1:00 tomorrow. 1:00. Thirty minutes
15 earlier than your luncheon recess is supposed
16 to end. 1:00 tomorrow. Okay.
17 The second announcement I want to make
18 is the following: After today, my long-term
19 law clerk, Michelle Mouton, is leaving my
20 staff. She has worked on this case with me
21 since its beginning in 1997, and I will
22 certainly miss her. She's been a great help
23 to me in the handling of this case, but she's
24 not going very far. Instead of in that seat,
25 she'll be in that little room back there
26 because she's going to work on Judge
27 Belsome's staff as his law clerk beginning
28 tomorrow, and I want to publicly thank her
29 for the work she's done on this case.
30 And we will recess until 1:00 tomorrow
31 afternoon. See you then. Thank you.
32 (Jury excused.)

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1 THE COURT:
2 Let the record reflect the jury has left
3 the record. Anything for the record by
4 plaintiffs' counsel?
5 MR. RUSS HERMAN:
6 Go ahead.
7 MR. BRUNO:
8 Judge, in connection with the testimony
9 and the cross-examination, I'd like to
10 introduce the following documents: First,
11 transcript Page 11,366 of this trial, the
12 admission of the defendants with regard to
13 cigarette smoking being addictive. The next
14 one is Exhibit Number 1882.01, which is the
15 website of Brown and Williamson. 1961.01,
16 which is the response to Request for

17 Admissions filed by Brown and Williamson.
18 806.01, the Response to Request for
19 Admissions filed by Philip Morris. 4741.01,
20 the website of R.J. Reynolds company.
21 4788.01, the Response to Request for
22 Admissions filed by R.J. Reynolds company.
23 2871.02, the Response to Request for
24 Admissions filed by Lorillard. GK-100254,
25 which is that article by -- in Nature
26 magazine. Okay. You know which one I'm
27 talking about?
28 MR. SCHNEIDER:
29 I think I do.
30 MR. BRUNO:
31 GK-000487, which is the Jack
32 Henningfield article entitled "Pharmacologic
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1 Basis in Treatment of Cigarette Smoking."
2 Scott Plaintiff Exhibit Number 0013 -- Rob, I
3 can't read this -- this is the Morbidity and
4 Mortality Weekly Report of December 23rd,
5 1994. It is 0913. 0913. I read it wrong.
6 Next one is 0972.02, Morbidity and Mortality
7 Weekly Report of July 26th, 2002. The next
8 is 1383.02, the CDC "Selected Cigarette
9 Smoking Initiation and Quitting Behaviors
10 Among High School Students," United States,
11 1997, Scott Exhibit Number 1383.02. The next
12 one is Scott Exhibit 1395.02, the CDC
13 "Reasons for Tobacco Use and Symptoms of
14 Nicotine Withdrawal Among Adolescent and
15 Young Adult Users." The next one is 1377.02,
16 "Incidence of Initiation of Cigarette Smoking
17 Among U.S. Teens." The next one is Scott
18 1396.02, Morbidity and Mortality Weekly
19 Report dated October 21, 1994. And, finally,
20 Scott Number 1174.01, Morbidity and Mortality
21 Weekly Report for October 6th, 2000.

22 THE COURT:
23 Objections?

24 MR. BRUNO:
25 And, last -- Doc, do you know if that
26 Kentucky data is in that one big number? You
27 all had it, looking at it?

28 MR. SCHNEIDER:
29 I think it was in that one big number.

30 MR. BRUNO:
31 All right. That's already in.

32 MR. SCHNEIDER:
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1 Not already in.

2 MR. BRUNO:

3 Not already in. I move for the
4 introduction of -- what's the number?

5 MR. SCHNEIDER:
6 1398.02.

7 Can I get a set of those documents you
8 were just referring to?

9 MR. BRUNO:

10 Yes. Which ones?
11 MR. SCHNEIDER:
12 Just hand me the set that you just
13 talked about. It was a long list.
14 THE COURT:
15 You want to wait till tomorrow morning?
16 MR. SCHNEIDER:
17 I would very much appreciate that,
18 Judge.
19 THE COURT:
20 I will take the offer under advisement.
21 Deal with that first thing in the morning.
22 Anything else for the record by
23 plaintiff?
24 MR. RUSS HERMAN:
25 I may have misheard, but I thought there
26 was a transposition of a number on the
27 document that Joe used for Brown and
28 Williamson and one that Doc used. I heard
29 something like 2147 one time and 1427 the
30 other. I may be mistaken, but I think we
31 ought to clarify that number.
32 THE COURT:
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1 I don't have a 2147 --
2 MR. SCHNEIDER:
3 I don't know. 1724 is the number.
4 MS. SULZER:
5 1724 is the number.
6 MR. RUSS HERMAN:
7 Is it 1724 is correct?
8 MS. SULZER:
9 That's correct, and the other one is
10 2413. Those are already in evidence.
11 MR. SCHNEIDER:
12 Right.
13 MR. RUSS HERMAN:
14 Your Honor, one other matter. As I
15 understand it, there's no more live testimony
16 this week; is that correct?
17 MR. WITTMANN:
18 That's correct.
19 MR. RUSS HERMAN:
20 So, we have deposition testimony
21 tomorrow beginning at 1:00 and then Friday,
22 correct?
23 MR. WITTMANN:
24 Correct.
25 MR. RUSS HERMAN:
26 And that's --
27 MR. WITTMANN:
28 Hamill, Gori and then Scheffman.
29 MR. LONG:
30 Well, we may put Scheffman on tomorrow
31 afternoon.
32 MR. RUSS HERMAN:
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1 Those are the three depositions, no live
2 testimony.

3 MR. WITTMANN:
4 Yes. We have a dispute among defendants
5 as to who's going first.
6 MR. RUSS HERMAN:
7 That's all right. We enjoy your
8 disputes, internally and publicly.
9 That's the only thing?
10 THE COURT:
11 Anything else by plaintiff counsel?
12 MR. WITTMANN:
13 No, Your Honor.
14 MR. BRUNO:
15 We're plaintiffs.
16 MR. RUSS HERMAN:
17 We would like to meet with Your Honor
18 and Mr. Richardson to resolve those four
19 issues.
20 THE COURT:
21 Anything for the record by defense
22 counsel?
23 MR. LONG:
24 No, Your Honor.
25 THE COURT:
26 We will recess until 1:00 tomorrow.
27 (Whereupon, the proceedings are
28 adjourned at 3:46 p.m.)
29
30
31
32

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1 REPORTER'S CERTIFICATE
2
3
4 I, CAROL VALLETTE SLATER, Certified Court
5 Reporter, Registered Professional Reporter, do
6 hereby certify that the foregoing proceedings were
7 reported by me in shorthand and transcribed under my
8 personal direction and supervision, and is a true
9 and correct transcript, to the best of my ability
10 and understanding;
11 That I am not of counsel, not related to
12 counsel or the parties hereto, and not in any way
13 interested in the outcome of this matter.
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19 CAROL VALLETTE SLATER (CCR 78020)
20 CERTIFIED COURT REPORTER
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